

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

Blue Spike, LLC Plaintiff, v. Texas Instruments, Inc. Defendant	§ § § § § § § § § §	Case No. 6:12-cv-499
--	--	-----------------------------

Blue Spike, LLC Plaintiff, v. Soundmouse, Ltd. Defendant.	§ § § § § § § § § §	Case No. 6:12-cv-00598
--	--	-------------------------------

**DEFENDANT SOUNDMOUSE, LTD.’S
MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS**

Defendant Soundmouse Ltd. (“Soundmouse”) files its *Motion to Dismiss* for Insufficient Service of Process, and would respectfully show the Court as follows:

I. Introduction.

Plaintiff Blue Spike, LLC (“Plaintiff”) failed to properly serve its *Complaint* on Soundmouse pursuant to the Federal Rules of Civil Procedure. Soundmouse is a company located in the United Kingdom. *See* Declaration of Charles Hodgkinson, attached hereto as Exhibit 1, at ¶ 2 (the “Hodgkinson Declaration”). Soundmouse does not have any locations in the United States. *See* Hodgkinson Declaration, ¶ 3. Given this, Plaintiff must serve

Soundmouse pursuant to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”).

In paragraph 3 of the *Complaint*, Plaintiff admits that it served Soundmouse by “process through the Texas Secretary of State.” Plaintiff also admits that Soundmouse is a “United Kingdom limited company” and its principal place of business is located in London. *See Complaint*, ¶ 3. Soundmouse did not receive any communications from Plaintiff through the mandatory procedures set forth in the Hague Convention.

II. The Court Should Dismiss this Case.

The Court should dismiss Plaintiff’s Complaint pursuant to Federal Rule of Civil Procedure 12(b)(5) for improper service. Federal Rule 4(h)(2) governs service on Soundmouse. *See Retractable Tech., Inc. v. Occupational & Med. Innovations, Ltd.*, 253 F.R.D. 404, 405 (E.D. Tex. 2008). This rule states that a foreign corporation outside the judicial district of the United States must be served in the manner specified for serving a foreign individual under Rule 4(f). FED. R. CIV. P. 4(h)(2). Rule 4(f) permits service “by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention.” FED. R. CIV. P. 4(f)(1). The United Kingdom is a signatory to the Hague Convention. http://www.hcch.net/index_en.php?act=states.listing Compliance with the Hague Convention is mandatory. *Compass Bank v. Katz*, 287 F.R.D. 392, 394 (S.D. Tex. 2012).

The Hague Convention sets for specific methods for service. *Nuovo Pignone, SpA v. Starman Asia MIV*, 310 F.3d 374, 383 (5th Cir. 2002). The Fifth Circuit has specifically stated that service of a foreign defendant by mail is prohibited by the Hague Convention. *Id.* at 385. Soundmouse received the summons and *Complaint* via registered mail from the Texas Secretary of State. *See Hodgkinson Declaration*, ¶ 4. Soundmouse has not received these documents

through the United Kingdom's Central Authority or diplomatic agents. *See* Hodgkinson Declaration, ¶ 5. The Court must therefore dismiss this case.

DATED: April 12, 2013

Respectfully submitted,

/s/ Ryan T. Beard
Eric B. Meyertons
Texas State Bar No. 14004400
emeyertons@intprop.com
Ryan T. Beard
Texas State Bar No. 24012264
rbeard@intprop.com

MEYERTONS, HOOD, KIVLIN, KOWERT &
GOETZEL, P.C.
1120 South Capital of Texas HWY
Building 2, Suite 300
Austin, Texas 78746
(512) 853-8800 (telephone)
(512) 853-8801 (facsimile)

ATTORNEYS FOR SOUNDMOUSE

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2013 I electronically filed the foregoing pleading with the clerk of court for the U.S. District Court, Eastern District of Texas, using the electronic case filing system of the court.

/s/ Ryan T. Beard
Ryan T. Beard